

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #5	CCRB Case #: 201501757	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/06/2015 7:40 PM	Location of Incident: § 87(2)(b)	Precinct: 100	18 Mo. SOL 9/6/2016	EO SOL 9/6/2016	
Date/Time CV Reported Thu, 03/12/2015 4:01 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/12/2015 4:01 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Ramiro Ruiz	05320	939384	NARCBQN
2. DT3 Michael McGovern	00576	938989	NARCBQN
3. POM Joongsuk Hwang	18437	943383	NARCBQN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Ramiro Ruiz	Abuse: Sgt. Ramiro Ruiz entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.POM Joongsuk Hwang	Abuse: PO Joongsuk Hwang pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.POM Joongsuk Hwang	Discourtesy: PO Joongsuk Hwang spoke discourteously to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.DT3 Michael McGovern	Abuse: Det. Michael McGovern refused to show a search warrant to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E.DT3 Michael McGovern	Abuse: Det. Michael McGovern searched § 87(2)(b) in Queens.	§ 87(2)(b)

Case Summary

At approximately 5:00 p.m. on March 6, 2015, a Narcotics Borough Queens North field team that included Sgt. Ramiro Ruiz, Det. Michael McGovern, PO Joongsuk Hwang, § 87(2)(e), § 87(2)(f) —were conducting a buy and bust operation in the 100th Precinct in Far Rockaway, Queens. At 6:15 p.m., § 87(2)(b) was arrested as a result of the operation, and at 7:40 p.m., the field team entered § 87(2)(b) (Allegation A), though they had not yet obtained any search warrant. Upon entering with their guns drawn, the officers first encountered § 87(2)(b) and § 87(2)(b) on the first floor. Both individuals were immediately handcuffed, though § 87(2)(b) alleged that even after his handcuffs were secured, PO Hwang held a gun to his head for as long as two minutes (Allegation B). When § 87(2)(b) reportedly told him to get the gun out of his face, PO Hwang allegedly refused to immediately do so and instead stated multiple times, “Shut the fuck up” (Allegation C). A third civilian who was upstairs at the time of the entry, § 87(2)(b) was also handcuffed and brought downstairs with the others. § 87(2)(b) and § 87(2)(b) repeatedly asked the officers, including Det. McGovern, to show them a search warrant, though the officers told them only that they would show one when they received it (Allegation D). It was further alleged that amidst this questioning, PO Hwang told them to “Shut the fuck up” (subsumed within Allegation C). Shortly thereafter, it was alleged that multiple officers search the house, recovering a quantity of heroin (Allegation E). All three civilians were subsequently arrested for criminal possession of a controlled substance. At 10:10 p.m., § 87(2)(b) was signed by the Honorable § 87(2)(b) authorizing a search of § 87(2)(b) in Queens.

Mediation, Civil and Criminal Histories

Given that multiple civilians were arrested as a result of this incident, the case was deemed unsuitable for mediation. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- Sgt. Ruiz has been a member of the NYPD for nine years and has been a subject in eight prior CCRB cases involving seventeen allegations (see Board Review #5). § 87(2)(g)
- PO Hwang has been a member of the NYPD for eight years and has been a subject in seven prior CCRB cases involving ten allegations (see Board Review #6). One prior discourtesy allegation has been pleaded against him associated with case #201410507, which was withdrawn by the complainant. § 87(2)(g)
- Det. McGovern has been a member of the NYPD for nine years and has been a subject in two prior CCRB cases involving three allegations (see Board Review #7). § 87(2)(g)
- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) (see Board Reviews #8 and #9). § 87(2)(b) has filed one prior CCRB complaint involving

allegations of a stop, search, force, and threat of force, though the complaint was ultimately withdrawn (see Board Review #10).

Potential Issues

During an initial telephone conversation on April 10, 2015, § 87(2)(b) who was identified as a victim, stated that he was willing to provide a statement but did not know his schedule and would call back when he did. After he failed to do so, four additional calls were placed to him from April 14, 2015 to April 20, 2015, with voicemails left each time. Furthermore, on April 8, 2015 and April 16, 2015, respectively, two please call letters—which have not been returned to the CCRB via the United States Postal Service—were mailed to the address he provided. As of the date of this report, § 87(2)(b) has not contacted the CCRB to provide a statement.

Separately, on May 5, 2015, an initial telephone call placed to § 87(2)(b) a witness, was answered by her unidentified father who stated that she was entering a rehabilitation program and did not have a personal telephone number. On May 4, 2015 and May 7, 2015, respectively, two letters—which have not been returned to the CCRB via the United States Postal Service—were mailed to the address listed on her arrest report. On June 2, 2015, § 87(2)(b)'s father called back and provided a telephone number at which § 87(2)(b) could be reached. During a telephone conversation on June 3, 2015, § 87(2)(b) answered and stated that she would provide a statement, but requested to be called back at a more convenient time. Accordingly, two additional calls were placed to her over the following two days, though as of the date of this report, she had not contacted the CCRB to provide a statement.

Findings and Recommendations

Allegations Not Pleaded

- **Guns Pointed/Property Damage:** Although officers did not have a search warrant at the time they entered, given the circumstances, the same entry procedures would apply. Accordingly, using a ram to break down the door and pointing their guns is subsumed within the entry allegation.
- **Refusal to Show a Search Warrant:** Although it was alleged that the civilians asked multiple officers to show a search warrant, this allegation is only pleaded against Det. McGovern, who applied for the search warrant and whose case this was.

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Sgt. Ramiro Ruiz authorized the entry into § 87(2)(b) in Queens.

It is undisputed that with Sgt. Ruiz' authorization, the Narcotics Borough Queens North field team entered § 87(2)(b) before they obtained a search warrant. Both civilians who provided statements denied knowing anything about drugs in the house, and § 87(2)(b) maintained that although she did see § 87(2)(b) exchange money with § 87(2)(b) in the kitchen earlier that night, she believed it was rent money and she denied having any knowledge of a drug transaction.

§ 87(2)(b), § 87(2)(c), § 87(2)(f)

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

[REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

[REDACTED]

Factors to consider when determining whether exigent circumstances justify a warrantless entry when officers have probable cause to believe there are narcotics being sold within include 1) the nature and degree of urgency involved and the amount of time needed to obtain a warrant, 2) a reasonable belief that the contraband is about to be removed, 3) the possibility of danger to police officers guarding the site of the contraband while the warrant is obtained, and 4) information indicating that the possessors of the contraband are aware that the police are on their trail. People v. Coles, 105 A.D.3d 1360 (4th Dept. 2013) (see Board Review #13). There is no definitive or exhaustive list of factors that create exigency and the facts of each case must be considered individually. People v. McBride, 14 N.Y.3d 440 (2010) (see Board Review #14).

§ 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)

[REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f), § 87(2)(g)

[REDACTED]

Allegation B—Abuse of Authority: PO Joongsuk Hwang pointed his gun at § 87(2)(b)

Allegation C—Discourtesy: PO Joongsuk Hwang spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that even after being handcuffed in the living room, PO Hwang held a gun to his head for a couple minutes despite § 87(2)(b) telling him to get it out of his face. In response, PO Hwang allegedly stated, “Shut the fuck up.” Although § 87(2)(b) was not present when this statement was reportedly made, she separately alleged that while she and the others were questioning the officers about a search warrant, PO Hwang told them all to “Shut the fuck up.” However, § 87(2)(b) did not make this additional discourtesy allegation.

Conversely, PO Hwang denied ever drawing his gun or pointing it at any civilian, instead maintaining that he was assigned to handle the dog and was carrying a fire extinguisher, not a gun. He stated that after the location was secured, he put the extinguisher back in his police vehicle and returned to find the civilians already handcuffed and seated in the living room. Det. McGovern corroborated that, upon entry, PO Hwang carried a fire extinguisher to subdue the dog, so he did not see him hold a gun to any civilian’s head. However, Sgt. Ruiz stated that he did see PO Hwang with his gun drawn, though he did not see him hold it to any civilian’s head. Both Det. McGovern and Sgt. Ruiz stated that shortly after entering, they went upstairs to apprehend § 87(2)(b) so they did not witness the full interaction between officers and § 87(2)(b) downstairs. Regarding the alleged discourtesies, Sgt. Ruiz did not recall if PO Hwang ever told

any civilians to shut up, but both he and Det. McGovern denied hearing PO Hwang tell anyone to “Shut the fuck up,” or use any profanity while speaking to any civilian.

§ 87(2)(b), § 87(2)(g)

Similarly, although all officers interviewed denied that PO Hwang used any profanity towards the civilians or told anyone to “Shut the fuck up,” § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D—Abuse of Authority: Det. Michael McGovern refused to show a search warrant to § 87(2)(b) and § 87(2)(b)

It is undisputed that despite multiple requests from § 87(2)(b) and § 87(2)(b) no officer showed anyone a search warrant. Det. McGovern, who requested and obtained the search warrant, explained that he did not show one because they entered and arrested the civilians under exigent circumstances before the warrant was actually issued. This timeline is corroborated by the officers’ memo books and the timestamp on the warrant, which was signed at 10:10 p.m., was approximately two and a half hours after the civilians were arrested. However, Det. McGovern also maintained that while the civilians were being processed at the stationhouse, he did show § 87(2)(b) a copy of the warrant. As § 87(2)(b) did not provide a statement to the CCRB, the investigation was unable to confirm this.

§ 87(2)(g)

Allegation E—Abuse of Authority: Det. Michael McGovern searched § 87(2)(b) in Queens.

It is undisputed that the officers entered the incident location without a search warrant. However, § 87(2)(b) alleged that she witnessed officers opening cabinets and closets in § 87(2)(b)’s room as she was being escorted downstairs and subsequently saw officers opening drawers and cabinets in the kitchen once seated in the living room. She further stated that there were no drugs, including heroin, in plain view in the house and anything recovered must have belonged to § 87(2)(b) who had been living there sporadically over the preceding months. Meanwhile, § 87(2)(b) did not report seeing any officers search any areas as described, but he stated that at one point, the officers brought § 87(2)(b) upstairs and returned several minutes later, reportedly after finding multiple bundles of heroin. § 87(2)(b) maintained that he did not know anything about there being drugs in the house and did not know where any drugs were located.

All officers interviewed denied searching or seeing any other officers search the location prior to obtaining the search warrant. However, Det. McGovern stated that as he was escorting § 87(2)(b) downstairs, he observed an open pill bottle sitting on a table in an upstairs common room containing rubber banded glassines that Det. McGovern recognized as packaged heroin. This plain view discovery reportedly served as the basis for the arrests of all civilians in the location. Sgt. Ruiz corroborated that heroine was recovered in plain view in the house before the warrant was obtained, but he did not recall who found them or the quantity recovered. Although PO Hwang was aware that narcotics were ultimately recovered from the house, he did not recall when or where the drugs were located. § 87(2)(b), § 87(2)(e), § 87(2)(f)

A warrantless search of a private residence is unconstitutional. However, an exception to this principal can be made if evidence of a crime is discovered in plain view, as something that a person exposes to the public cannot be the subject of a legitimate expectation of privacy. People v. Knapp, 52 N.Y. 2d 689 (1981) (see Board Review #18).

§ 87(2)(b), § 87(2)(g)

POD: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date